

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JACK ELLIOT,

Plaintiff,

v.

TAKHAR COLLECTION SERVICES, LTD.,  
AND DOE 1,

Defendants.

No. 12-CV-0138-EFS

**ORDER GRANTING PLAINTIFF'S MOTION  
OF ENTRY OF DEFAULT JUDGMENT AND  
ATTORNEY'S FEES, DIRECTING ENTRY  
OF JUDGMENT, AND CLOSING FILE**

**I. INTRODUCTION**

Before the Court, without oral argument, is Plaintiff Jack Elliot's Motion for Entry of Default Judgment and Attorney's Fees, ECF No. 12. The motion seeks default judgment against Defendant Takhar Collection Services, Ltd. based on Defendant's failure to answer the complaint. Having reviewed the pleadings and file in this matter, the Court is fully informed and grants Plaintiff's motion.

**II. BACKGROUND<sup>1</sup>**

Defendant is a debt collector who began contacting Plaintiff in January 2011 seeking to collect a debt of Sean Luce. ECF No. 1, at 3. Mr. Luce is a prior acquaintance of Plaintiff. *Id.* Plaintiff

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<sup>1</sup> The Court accepts as true all well-pleaded factual allegations of Plaintiff's complaint. See *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992) (citing *Benny v. Pipes*, 799 F.2d 489, 495 (9th Cir. 1986)).

1 explained to Defendant that Mr. Luce did not reside at the address of  
2 the number called and that he had no contact information for Mr. Luce.  
3 *Id.* Defendant continued to call Plaintiff two-to-three times per day.  
4 *Id.* Although Plaintiff called and asked Defendant to cease contacting  
5 him, the calls continued. *Id.* In a later phone conversation with  
6 Plaintiff's counsel, an employee of Defendant explained that their  
7 automated calling system requires three-to-five business days to  
8 deactivate an erroneous phone number; however, each time Plaintiff  
9 called to request that Defendant stop calling, the system recognized  
10 the number as Mr. Luce's and reinstated the number in their system.  
11 *Id.*

12 Plaintiff filed a complaint under the Fair Debt Collection  
13 Protections Act ("FDCPA"), and served Defendant on May 18, 2012. ECF  
14 No. 2. Defendant did not respond or defend against the claim. *Id.*  
15 Therefore, the Clerk entered default against Defendant on September  
16 20, 2012. ECF No. 8. Plaintiff mailed a Notice of Intent to File  
17 Motion for Default Judgment to Defendant on January 15, 2013. ECF No.  
18 10. Plaintiff moved for entry of default judgment on February 19,  
19 2013. ECF No. 12. On April 30, 2013, the Court ordered Plaintiff to  
20 supplement his motion with documentation supporting his request for  
21 attorney's fees. ECF No. 13. Plaintiff moved for an extension of  
22 time to file the supplemental motion, which was granted by the Court  
23 on June 18, 2013. ECF No. 16. Plaintiff's supplemental declaration  
24 was filed on July 15, 2013. ECF No. 17.

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### 1 III. LEGAL STANDARD

2 Under Federal Rule of Civil Procedure 55, obtaining a default  
 3 judgment is a two-step process. First, under Rule 55(a), default may  
 4 be entered by the Clerk of Court when the "party against whom a  
 5 judgment for affirmative relief is sought has failed to plead or  
 6 otherwise defend." Fed. R. Civ. P. 55(a). Once default has been  
 7 entered, the party seeking default judgment may then file a motion for  
 8 default judgment pursuant to Rule 55(b). The decision of whether or  
 9 not to grant default judgment is within the discretion of the district  
 10 court. See *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In  
 11 exercising its discretion to grant or deny a motion for default  
 12 judgment, the Court considers the following factors:

13 (1) the possibility of prejudice to the plaintiff; (2) the  
 14 merits of plaintiff's substantive claim; (3) the  
 15 sufficiency of the complaint; (4) the sum of money at stake  
 16 in the action; (5) the possibility of a dispute concerning  
 17 material facts; (6) whether the default was due to  
 18 excusable neglect; and (7) the strong policy underlying the  
 19 Federal Rules of Civil Procedure favoring decisions on the  
 20 merits.

21 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

### 22 IV. DISCUSSION

#### 23 A. Motion for Default

24 A careful analysis of the above *Eitel* factors supports granting  
 25 default judgment here. First, Plaintiff will experience prejudice if  
 26 judgment is not granted. He has invested time and energy into the  
 lawsuit.<sup>2</sup> In addition, as Defendant has failed to answer or otherwise

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<sup>2</sup> Plaintiff's counsel has indicated no out-of-pocket fee was charged  
 to Plaintiff for representation. ECF No. 12, at 9.

1 respond, Plaintiff would be prejudiced because he would otherwise have  
2 no recourse for his grievance.

3 With regard to *Eitel's* second and third factors, Plaintiff's  
4 complaint alleges sufficient factual grounds to demonstrate that  
5 Plaintiff's FDCPA claims have merit. For instance, Plaintiff alleged  
6 the following facts supporting a 15 U.S.C. § 1692b(3) violation: 1)  
7 Defendant is a "debt collector" under 15 U.S.C. § 1692a(6), and 2)  
8 Defendant violated the FDCPA by repeatedly contacting Plaintiff after  
9 being informed that Plaintiff had no contact information for Mr. Luce.  
10 ECF No. 1, at 3, 4.

11 Plaintiff also alleged the following facts supporting a 15  
12 U.S.C. § 1692d violation: 1) Defendant is a "debt collector" under 15  
13 U.S.C. § 1692a(6), and 2) Defendant violated the FDCPA by harassing,  
14 oppressing, and abusing him in connection with the collection of a  
15 debt by calling him two-to-three times per day. ECF No. 1, at 3, 5.

16 The sum of money at stake in the action, *Eitel's* fourth factor,  
17 is relatively small; thus, this factor favors default judgment. And  
18 in considering *Eitel's* fifth factor – the possibility of dispute  
19 concerning material facts – the Court believes it unlikely Defendant  
20 would dispute the above material facts. The parties likely agree that  
21 Plaintiff did not have contact information for Mr. Luce and that  
22 Defendant continued to call Plaintiff.

23 *Eitel's* sixth factor, whether Defendant's default was due to  
24 excusable neglect, favors default judgment because Plaintiff provided  
25 proof of service of Defendant, ECF No. 2, and notified Defendant of  
26 his intent to move for default judgment, ECF No. 10. Defendant has

1 not answered the complaint or opposed the motion. Therefore, the  
2 Court has no reason to believe Defendant's default resulted from  
3 excusable neglect.

4 Finally, *Eitel's* seventh factor, the possibility of reaching a  
5 decision on the merits, is a slim probability in this case. The small  
6 statutory penalty makes it cheaper for Defendant to pay the statutory  
7 fine and attorney's fees, rather than the costs associated with  
8 litigating Plaintiff's claims.

9 In short, the balance of these factors overwhelmingly favors  
10 granting default judgment.

11 **B. Statutory Damages**

12 Plaintiff seeks the full statutory damages allowable under the  
13 FDCPA. ECF No. 12, at 9. The FDCPA allows the Court to award damages  
14 up to \$1,000 per lawsuit. 15 U.S.C. § 1692k(a)(2)(A); *Nelson v.*  
15 *Equifax Info. Services, LLC*, 522 F. Supp. 2d 1222, 1239 (C.D. Cal.  
16 2007). In determining the amount of damages, the Court considers "the  
17 frequency and persistence of noncompliance by the debt collector, the  
18 nature of such noncompliance, and the extent to which such  
19 noncompliance was intentional." 15 U.S.C. § 1692k(b)(1).

20 After considering these factors, the Court awards Plaintiff the  
21 full statutory amount. Defendant has not answered, objected, or  
22 otherwise appeared in this case to demonstrate why \$1,000 is an unfair  
23 sum. Because the noncompliance was frequent, considering the numerous  
24 calls alleged by Plaintiff, the Court finds that statutory damages of  
25 \$1,000 are warranted under § 1692k(a)(2)(A).

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1           **C.     Attorney's Fees**

2           Plaintiff's counsel asks the Court to award \$1,335 in attorney's  
3 fees. The FDCPA allows for an award of reasonable attorney's fees, as  
4 determined by the Court, to a prevailing party. 15 U.S.C. §  
5 1692k(a)(3).

6           A prevailing party's attorney's fees are calculated using the  
7 lodestar method, which multiplies the number of hours reasonably  
8 expended on the litigation by a reasonable local hourly rate for an  
9 attorney with the skill required to perform the litigation. *Moreno v.*  
10 *City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008); *Morales v.*  
11 *City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). At first  
12 glance, calculating attorney's fees seems a matter of rudimentary  
13 arithmetic. But the Court must take great care in ensuring that the  
14 number of hours claimed were reasonably expended on the litigation by  
15 1) considering whether the hours are excessive, redundant, or  
16 otherwise unnecessary or unreasonable in light of the issues involved,  
17 and 2) ensuring that the hourly fee is reasonable given the skill and  
18 experience of counsel in light of the legal services at issue and  
19 results obtained. See *Pennsylvania v. Del. Valley Citizens' Council*  
20 *for Clean Air*, 478 U.S. 546, 566 (1986) (recognizing that the quality  
21 of counsel's representation is reflected in the reasonable hourly  
22 rate); *Morales*, 96 F.3d at 363; *Green v. Baca*, 225 F.R.D. 612, 614  
23 (C.D. Cal. 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433-35  
24 (1983)). There is a strong presumption that the lodestar figure  
25 represents a reasonable fee; therefore, it is only in rare and  
26 exceptional circumstances that the lodestar method does not adequately

1 take into account a factor that may properly be considered in  
2 determining that an enhancement above the lodestar calculation is  
3 appropriate. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010).

4 With these standards in mind, the Court applies the lodestar  
5 method. The Court finds the amount of hours claimed - 3.8 hours for  
6 attorney services and 3.9 hours for paralegal services - are  
7 reasonable and necessary; there was neither duplication nor excessive  
8 effort expended.

9 Plaintiff has supplied the following hourly rates for counsel:  
10 Jason Couey, at \$300 per hour, and Robert Amador, at \$300 per hour.  
11 ECF No. 12-5. Plaintiff requests paralegal fees at \$50 per hour. *Id.*  
12 Typically, the fee applicant bears the burden "to produce satisfactory  
13 evidence - in addition to the attorney's own affidavits - that the  
14 requested rates are in line with those prevailing in the  
15 community . . . ." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).  
16 Reasonable hourly rates are calculated according to the prevailing  
17 market rates in the relevant community for "similar work performed by  
18 attorneys of comparable skill, experience, and reputation." *Chalmers*  
19 *v. City of L.A.*, 796 F.2d 1205, 1210-11 (9th Cir. 1997). The relevant  
20 community is generally the forum in which the district court sits.  
21 *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997).

22 Plaintiff's counsel was unable to secure affidavits from  
23 attorneys that practice in the Eastern District of Washington to  
24 establish prevailing market rates. However, the Court finds  
25 Plaintiff's counsel exercised good faith in attempting to secure this  
26 information. Additionally, Plaintiff's counsel provided satisfactory

evidence in the form of case law and market studies to support their proposed attorney's fees. ECF No. 17, at 4. The Court is satisfied that Plaintiff's counsel's skill, experience, and reputation warrant a fee of \$300 per hour. The total fees requested by Plaintiff's counsel are also reasonable considering no additional attorney's fees were sought in attempting to obtain affidavits to establish market rate, despite the fact that the Court expressly granted counsel leave to seek these additional fees.

For the reasons set forth above, the Court finds an award of attorney's fees in the amount of \$1,335 to be appropriate and reasonable.

#### **D. Costs**

Plaintiff seeks costs of \$350 in filing fees and \$10.90 in *pro hac vice* fees, for a total of \$360.90. ECF No. 12-5. Court costs are recoverable in FDCPA actions. 15 U.S.C. § 1692k(a)(3). Therefore, the Court awards Plaintiff \$360.90 in costs.

#### **V. CONCLUSION**

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Entry of Default Judgment and Attorney's Fees, **ECF No. 12**, is **GRANTED**.
2. The Clerk's Office is directed to **ENTER JUDGMENT** for Plaintiff in the amount of \$1,000 in damages, \$1,335 in attorney's fees, and \$360.90 in costs.

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1           3.     All pending motions and deadlines are **STRICKEN**.

2           4.     The Clerk's Office is directed to **CLOSE** this file.

3           **IT IS SO ORDERED.**   The Clerk's Office is directed to enter this  
4 Order and provide copies to Plaintiff's counsel.

5           **DATED** this 26th day of July 2013.

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7                               s/Edward F. Shea  
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                              EDWARD F. SHEA  
8                               Senior United States District Judge  
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